

Procedures for Reviewing and Appealing a Notice of Deficiency Determination for Nebraska Motor Fuels Taxes

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For more information,
check our Web site:
www.nol.org/revenue/fuels/index.htm



The purpose of this information guide is to summarize the available procedures by which a taxpayer who has received a Notice of Deficiency Determination from the Motor Fuels Division may obtain administrative review of the proposed assessment of tax, penalty, and interest. This guide also covers the appeal procedures by which a taxpayer may obtain judicial review of the State Tax Commissioner's final decision. Nebraska taxpayers have the right to due process of law in matters before the division. The division will provide a fair and speedy review of protests and appeals of disputed tax matters. This guide does not address all questions which may arise but is intended to provide the taxpayer with an overview of the review and appeal procedures.

What is a Notice of Deficiency Determination?

A Notice of Deficiency Determination is a letter informing the taxpayer of the amount of tax, interest, and penalty the Motor Fuels Division asserts is due to the State of Nebraska. The notice may result from an audit of the taxpayer's books and records, or it may be based upon the best information available to the division. Enclosed with the notice are schedules and workpapers that identify the basis for the assessment. If there are any questions concerning the computation of the amount assessed, the division's position concerning an item which was taxed, or the appeals procedure, contact the Motor Fuels Division.

Penalty. Penalty is assessed in accordance with state law. The State Tax Commissioner has discretionary authority to abate all or a portion of the penalty. The taxpayer may request a penalty abatement at any time, whether or not the taxpayer has filed a petition for redetermination. A Motor Fuels Application for Abatement of Penalty, Form 21MF, is available from the division.

Interest. The division assesses interest on unpaid taxes, as required by statute. The State Tax Commissioner generally has no authority to waive interest, but may correct errors in its computation. If the taxpayer can identify a computational error, it will be adjusted upon request without need to file a petition for redetermination. In all cases, interest accrues only on the amount of tax finally determined to be due. Interest is never assessed on penalty or interest.

Interest accrues on the tax portion of the assessment until the taxes are paid. A taxpayer may wish to stop the accrual of interest on the tax portion of a proposed assessment without giving up the right to contest the assessment before it becomes final. If so, the tax portion can be paid "under protest." The taxpayer must file a timely petition for redetermination of the disputed taxes.

Do you agree with the assessment?

If the taxpayer accepts the Notice of Deficiency Determination as issued, payment of the amount assessed must be made.

- ✓ If the taxpayer has been notified that all payments must be EFT, the audit payment must be made using EFT. To ensure proper processing, it is recommended that the audit payment not be commingled with normal EFT payments.
- ✓ If the taxpayer is not an EFT payer, the audit payment must be mailed to the Motor Fuels Division, P.O. Box 98904, Lincoln, NE 68509-8904. To ensure proper processing, a copy of the Notice of Deficiency Determination should be included with the payment.

Do you disagree with the assessment?

If the taxpayer wishes to dispute the Notice of Deficiency Determination, a timely petition for redetermination must be filed with the Motor Fuels Division, P.O. Box 98904, Lincoln, Nebraska 68509-8904. This petition for redetermination must be in writing. Although petitions may be amended to supply some omitted elements, no writing filed with the division will be recognized as a petition for redetermination unless it is sufficient to identify the taxpayer and inform the division of the taxpayer's intent to protest an identifiable Notice of Deficiency Determination.

The elements of a petition for redetermination must:

- Identify the taxpayer.
- Identify the specific Notice of Deficiency Determination being protested.
- Identify each item or issue within the proposed assessment being protested. Include a statement as to why it is believed the assessment is incorrect (Where appropriate, the protested items should be identified by the audit workpaper page and line numbers).
- Include a statement of the relief sought by the taxpayer.

Taxpayers are responsible for the timeliness and adequacy of their petitions for redetermination. Upon request, the division will offer assistance regarding the form and content of a petition for redetermination.

Time. The taxpayer must file a petition for redetermination within 30 days from the postmark date of the Notice of Deficiency Determination for all motor fuel taxes except nonhighway use motor vehicle fuels tax. Petitions for redetermination of nonhighway use motor vehicle fuels tax must be filed within 90 days from the postmark date of the notice.

If a petition for redetermination is not filed within the applicable 30- or 90-day limitation, the Notice of Deficiency Determination becomes final, and the tax, interest and penalty assessment is due and payable. The division will not accept a faxed protest to meet the statutory filing requirements.

When a Notice of Deficiency Determination is protested, the statutory time restrictions for collection of the assessed tax, interest, and penalty are suspended until a final determination has been made. Both parties have a duty to keep the case active. Once protested, an assessment is not finalized until an order is issued by the State Tax Commissioner.

Representation. Whenever the taxpayer wishes to be represented by another individual, such as an attorney or accountant, the taxpayer must furnish a written authorization for that person to act on the taxpayer's behalf. Representatives may be appointed using a Power of Attorney, Form 33, or its equivalent. No such appointments will be recognized until they are filed with the Motor Fuels Division.

Informal Conference. The Motor Fuels Division will acknowledge the receipt of a petition for redetermination in writing. If the taxpayer requests, the Motor Fuels Division will also schedule an informal conference to be held at the Motor Fuels Lincoln office. The purpose of the informal conference is to eliminate items from the assessment on the basis of additional information supplied by the taxpayer and to clarify any factual or legal issues in preparation for a formal hearing. In many cases, all items of protest can be resolved at the informal conference or from information obtained as a result of the informal conference.

If the issues of fact or law raised by the taxpayer's petition are resolved through informal discussions, the case will be

closed through issuance of a Motion to Dismiss and Order of the State Tax Commissioner.

Formal Hearing. If the issues of fact and law raised by the taxpayer's petition are not resolved through informal discussions between the division and taxpayer, the matter will proceed to formal hearing before the State Tax Commissioner. A hearing officer may be designated to preside on behalf of the State Tax Commissioner. The division and the taxpayer will be encouraged to stipulate to the undisputed facts for purposes of the formal hearing. The taxpayer and the division will also be encouraged to agree upon a statement of the remaining factual and legal issues to be submitted for decision by the State Tax Commissioner upon conclusion of the formal hearing. In complex cases, or in cases where agreements are lacking or issues remain undeveloped, the formal hearing may be preceded by a prehearing conference, presided over by the hearing officer.

At the formal hearing, both the taxpayer and the division are afforded the opportunity to present evidence (including the testimony of witnesses, documents, and other exhibits) and arguments bearing upon the issues raised in the protest. The taxpayer may request that the formal hearing be governed by the rules of evidence of the district court. Such requests must be made in writing at least three days in advance of the hearing. A verbatim record of the proceedings is made by tape-recording or other appropriate method for use in the event of further appeal.

After reviewing the evidence submitted, the State Tax Commissioner will issue a written order deciding all issues submitted at the formal hearing.

Appeal of Decision After Formal Hearing. If the taxpayer disagrees with the decision resulting from the formal hearing, he or she may appeal the decision to the District Court of Lancaster County within 30 days from the postmark date of the State Tax Commissioner's Order. Any such appeal must be filed with the clerk of that court.

The district court will review the State Tax Commissioner's decision on the basis of the record of the proceedings within the agency. Taxpayers may not introduce additional evidence in the course of their appeal, but are bound by the evidentiary record made at their formal hearing before the State Tax Commissioner. Proceedings on appeal are governed by the Administrative Procedures Act, Chapter 84, article 9, of the Nebraska Revised Statutes.

If no appeal to the Lancaster County District Court is filed within the 30-day period, the order becomes final and unappealable. Any tax, penalty, or interest is then due and payable and the assessment will be collected by the division if not paid.

For additional information about these procedures, please contact the Motor Fuels Division, P.O. Box 98904, Lincoln, Nebraska 68509-8904, or call toll free 800-554-FUEL (800-554-3835). In the Lincoln area call 471-5730.